

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED CEREBRAL PALSY
ASSOCIATION, INC.,

Plaintiff,

v.

PHOENIX INSURANCE COMPANY AND
TRAVELERS INDEMNITY COMPANY,

Defendants.

No. C04-2491Z

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) The Court heard oral argument on September 14, 2005, on Plaintiff's Motion for Summary Judgment, docket no. 20. The Court granted and denied the motion in part for the reasons stated on the record. The Court also deferred a ruling on the issue of whether, as a matter of law, Defendants acted in bad faith. The Court now DENIES the Plaintiff's motion, docket no. 20, on the issue of bad faith. There are material issues of fact that remain as to whether Defendants' breach of the duty to defend and indemnify was "unreasonable, frivolous, or unfounded." See Holly Mountain Resources, Ltd. v. Westport Insurance Corp., 104 P.3d 725, 733 (Wash. Ct. App. 2005). Contrary to Plaintiff's contention, Truck Insurance Exchange v. Vanport Homes, Inc., 147 Wn.2d 751 (2004), does not stand for the proposition that because this Court has found a duty to defend and indemnify, an insurer is liable for damages for the tort of bad faith.

1 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
2 record.

3 Filed and entered this 15th day of September, 2005.

4 BRUCE RIFKIN, Clerk

5 s/ Casey Condon

6 By _____
7 Casey Condon
8 Deputy Clerk